

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

<b>United States District Court</b>	District Eastern District of Virginia
Name (under which you were convicted): Lorene Chittenden	Docket or Case No.: 1:12-cr-00394-LO-4
Place of Confinement: N/A	Prisoner No.: N/A
UNITED STATES OF AMERICA <div style="text-align: center;">V. Lorene Chittenden</div>	

**MOTION**

1. (a) Name and location of court which entered the judgment of conviction you are challenging:

U.S. District Court - Alexandria Division

(b) Criminal docket or case number (if you know): 1:12-cr-00394-LO-4

2. (a) Date of the judgment of conviction (if you know): 10/3/2014

(b) Date of sentencing: 10/3/2014

3. Length of sentence: 42 months

4. Nature of crime (all counts):

18:1349 Conspiracy to Commit Bank Fraud and Mail Fraud (Count One); 18:1334 and 2 Bank Fraud  
(Counts 11, 12, 16, 19, 20, 21, 22, 23, 24 and 25)

5. (a) What was your plea? (Check one)

(1) Not guilty ☒

(2) Guilty ☐

(3) Nolo contendere (no contest) ☐

6. (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☒

Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes ☒

No ☐

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8. Did you appeal from the judgment of conviction? Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: U.S. Court of Appeals for the Fourth Circuit

(b) Docket or case number (if you know): 15-4659

(c) Result: Convictions affirmed

(d) Date of result (if you know): 1/31/2017

(e) Citation to the case (if you know): 848 F.3d 188

(f) Grounds raised:

Pretrial seizure of defendant's assets violated her Sixth Amendment right to counsel; there was insufficient evidence to support defendant's conviction for conspiracy to commit bank fraud and mail fraud; district court abused its discretion in admitting co-conspirator's testimony regarding real estate agent's statements regarding his discussion with defendant pursuant to co-conspirator exception to hearsay rule; insufficient evidence to support defendant's bank fraud conviction; government constructively amended indictment; forfeiture based on conspirator liability improper.

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☒ No ☐

If "Yes," answer the following:

(1) Docket or case number (if you know): 17-5100

(2) Result: Judgment vacated and case remanded for further proceedings in light of Honeycutt v. United States, 581 U.S. —, 137 S.Ct. 1626, 198 L.Ed.2d 73 (2017).

(3) Date of result (if you know): 11/13/2017

(4) Citation to the case (if you know): 138 S.Ct. 447

(5) Grounds raised:

Challenge to conviction and forfeiture.

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

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- (4) Nature of the proceeding: \_\_\_\_\_
- (5) Grounds raised: \_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: \_\_\_\_\_

(2) Docket of case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

**GROUND ONE: Counsel's Ineffectiveness Impaired Chittenden's Ability to Make a Knowing and Voluntary Decision About Whether to Hire or Fire Retained Counsel**

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(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Chittenden was represented by attorneys John Davis and Doug Ross. Neither Davis nor Ross told Chittenden before she agreed to hire either of them that both had close business relationships with Cardinal Bank. In fact, Chittenden did not learn of Davis and Ross' relationship with Cardinal Bank until after she had already been convicted. Chittenden became dissatisfied with Davis and Ross' representation of her, but could not afford to hire other counsel because her untainted assets had been frozen. Neither Davis nor Ross explained to Chittenden that if Chittenden wanted new counsel, the Court would have been required by the U.S. Constitution to release some of Chittenden's frozen funds so she could hire new counsel. Davis and Ross also did not explain to Chittenden that she had the unilateral right to fire both Davis and Ross, without permission of the Court. Finally, Davis and Ross did not explain to Chittenden that if she fired Davis and Ross she would have been allowed to access her funds to hire new counsel--or if that did not occur, appointed counsel at the Government's expense. But for Counsel's ineffectiveness, Chittenden would have fired Davis and Ross and hired new counsel or proceeded with appointed counsel. See, Declaration of Lorene Chittenden and Wilhelmina Shelton.

See also Memorandum of Law and Facts in Support of 28 U.S.C. § 2255 Motion to be filed forthwith.

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(b) **Direct Appeal of Ground One:**

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

- (2) If you did not raise this issue in your direct appeal, explain why:

Claims of ineffective assistance are more properly reserved for collateral attack.

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(c) **Post-Conviction Proceedings:**

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☐

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

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- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☐

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(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

**GROUND TWO:** Counsel Was Ineffective For Failing to Object to the Willful Blindness Instruction

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The Court gave the jury a willful blindness instruction. Chittenden's lawyer's did not object. This was ineffective assistance because the Government did not put on any evidence of deliberate ignorance by Chittenden. Rather, the Government's theory of the case was that Chittenden had actually, substantively participated in the charged offenses. A willful blindness instruction may not be given unless there "is evidence of both actual knowledge and deliberate ignorance." *United States v. Schnabel*, 939 F.2d 197 (4th Cir.1991). There was no such evidence in Chittenden's case. Chittenden was prejudiced by this error because the evidence of Chittenden's guilt was not overwhelming. There is a reasonable probability the jury would have returned a not guilty verdict or been unable to reach a verdict but for the willful blindness instruction.

See Memorandum of Law and Facts in Support of 28 U.S.C. § 2255 Motion to filed forthwith.

**(b) Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Claims of ineffective assistance are properly reserved for collateral attack.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

**GROUND THREE:** \_\_\_\_\_

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(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

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**(b) Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

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**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is “Yes,” state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

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Docket or case number (if you know): \_\_\_\_\_

Date of the court’s decision: \_\_\_\_\_

Result (attach a copy of the court’s opinion or order, if available): \_\_\_\_\_

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(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is “Yes,” did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is “Yes,” state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court’s decision:

Result (attach a copy of the court’s opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is “No,” explain why you did not appeal or raise this issue:

**GROUND FOUR:**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

**(b) Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is “Yes,” state:



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Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

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14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

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15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing:

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(b) At the arraignment and plea:

John Davis

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(c) At the trial:

John Davis & Doug Ross

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(d) At sentencing:

Joe Pope

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(e) On appeal:

Joe Pope

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(f) In any post-conviction proceeding:

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(g) On appeal from any ruling against you in a post-conviction proceeding:

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16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

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(b) Give the date the other sentence was imposed: \_\_\_\_\_

(c) Give the length of the other sentence: \_\_\_\_\_

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\*

This motion is timely because it is submitted within one year of when Chittenden's conviction became final. On July 25, 2018, the Fourth Circuit, on remand from the Supreme Court, vacated and remanded the case to the district court for further proceedings. *United States v. Chittenden*, 896 F.3d 633 (4th Cir. 2018).

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\* The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

Vacate all of her convictions

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or any other relief to which movant may be entitled.

/s/Makiba Gaines & /s/ Brandon Sample

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on \_\_\_\_\_ .  
(month, date, year)

Executed (signed) on \_\_\_\_\_ (date)

\_\_\_\_\_  
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.